



remy green <remy@femmelaw.com>

In re 2020 Policing - Defendants' Statement They Would Maintain Non-Responsive Redactions

Ibrahim, Nadine (LAW) <nibrahim@law.nyc.gov>

Fri, Jul 8, 2022 at 7:24 PM

To: remy green <remy@femmelaw.com>, "Robinson, Amy (LAW)" <arobinso@law.nyc.gov>, "Weng, Jenny (Law)" <jweng@law.nyc.gov>, NYC Law Protest Team <NYCLawProtestTeam@law.nyc.gov>

Cc: AG-NYPDLitigation <AG.NYPDLitigation@ag.ny.gov>, Gray Legal Team-External <GrayLegalTeam@dwt.com>, Hernandez Team <hernandez@femmelaw.com>, Payne Litigation Team <PayneLitigationTeam@nyclu.org>, Sierra Team <SierraTeam@moskovitzlaw.com>, Sow-Legal <Sow-Legal@blhny.com>, Wood <wood@klflaw.com>

Remy,

I am confused by your email and what "misstatement" you are talking about. As you recall, the court limited your motion for sanctions to the issue of redactions within a document that were not court allowed. The letter filed last night only addressed defendants' prior position as it related to "NR" redactions within a document; it did not address defendants' prior position as it related to slip sheeted documents or email attachments that were withheld in full, which you appear to be referencing in your email.

I believe we are all in agreement as to what needs to be produced per the Court's order. That is, for the "NR" redactions within a document, we agree to re-review the non-specific "NR" redactions and reproduce the documents in full, unless a privilege or another court-allowed redaction applies; which is what we agreed to do in our June 3, 2022 email. The only difference between what we agreed to do on June 3rd and what the Court ordered is that we subsequently identified a small number of specific NR redactions (not telephone numbers or disciplinary history redactions) that we believe should also be included in the re-review and we noted this in our letter to the Court.

We did not attach the entire email chain because we did not believe it was necessary to understand defendants' position as the subsequent email was simply referring you back to the re-review we outlined in our June 3 email. However, if despite this, you still believe those emails are necessary for context, I am happy to file them on the docket. Please advise.

Additionally, defendants believe that the declaration was due today. It will be sent to plaintiffs this evening.

Sincerely,

Nadine Ibrahim

Senior Counsel

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From: remy green <remy@femmelaw.com>

Sent: Friday, July 8, 2022 1:09 PM

To: Ibrahim, Nadine (LAW) <nibrahim@law.nyc.gov>; Robinson, Amy (LAW) <arobinso@law.nyc.gov>; Weng, Jenny

(Law) <jweng@law.nyc.gov>; NYC Law Protest Team <NYCLawProtestTeam@law.nyc.gov>

Cc: AG-NYPDLitigation <AG.NYPDLitigation@ag.ny.gov>; Gray Legal Team-External <GrayLegalTeam@dwt.com>; Hernandez Team <hernandez@femmelaw.com>; Payne Litigation Team <PayneLitigationTeam@nyclu.org>; Sierra Team <SierraTeam@moskovitzlaw.com>; Sow-Legal <Sow-Legal@blhny.com>; Wood <wood@klflaw.com>

Subject: [EXTERNAL] Re: In re 2020 Policing - Defendants' Statement They Would Maintain Non-Responsive Redactions

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. Forward suspect email to phish@cyber.nyc.gov as an attachment (Click the More button, then forward as attachment).

Hi Nadine,

Defendants' filing with the court, Dkts. 638, 640, omitted all of the emails in this chain from plaintiffs on May 27th and June 6th. And in the email attached to the letter you filed with the Court, here's what you said:

Defendants agree to re-review the family members that were slipsheeted for non-responsiveness to ensure that *they are in fact non-responsive* and properly slipsheeted in accordance with the parties' negotiated specifications ... *Similarly*, Defendants will re-review the non-specific "NR" redactions and remove or modify same *if necessary*.

(emphasis mine). To suggest that this language means Defendants agreed not to assert "NR" as a basis for any withholding is fanciful. For slipsheets, the email makes clear you will continue to withhold documents if you believe "they are in fact non-responsive" and that your approach for redactions will be "similar" and you will only modify "if necessary." The Court ordered all documents produced without *any* NR redactions -- rather, only redactions that were mistakenly labeled NR, but were arguably proper for another reason (personal privacy for old discipline, PII for phone numbers) are permitted.*

You also omitted our follow-up email specifically asking for clarification on this question and pointing out that your email was "ambiguous" as to what redactions Defendants were proposing to remove. Your response declined to address that ambiguity, only stating that you were "agreeing to re-review and will get back to" us.

We will likely seek further sanctions for this misstatement to the Court, unless Defendants correct the record today.

Additionally, Defendants violated the Court's order in failing to produce the declaration explaining what the 395 stand-alone withheld documents within "one week" that the Court directed at the conference. Please consider this a request to meet and confer on what caused that failure, so we can discuss whether any sanctions are appropriate.

Yours,

Remy.

*Once again, if you believe Defendants are allowed to withhold *anything* on the basis of responsiveness in what is due over the next two weeks, we need to meet and confer now.

J. Remy Green

Partner

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On Thu, Jun 30, 2022 at 12:47 PM remy green <remy@femmelaw.com> wrote:

Hi all,

As discussed in Court today, we think Defendants were very clear they intended to maintain all documents they believed they "properly" redacted as "NR."

Attached is an email -- *post-motion* -- from Stephanie. She discusses "defendants' agreement in their letter filed with the Court on 6/15/22 (Dkt #605) to remove any improper "NR" redactions." Here's what Defendants said in Dkt 605 (emphasis mine):

Although there are over 5,000 individual “NR” redaction boxes spread across these approximately 500 documents, defendants agreed to re-review all such redactions to ensure their propriety; defendants will also add specificity to the redaction boxes as necessary. *If defendants should locate any information incorrectly redacted as “NR,” they will remove the improper redaction* and replace it with a correct redaction (such as for privilege or other protection, as appropriate) or re-produce the document without the redaction(s). In the meantime, defendants have re-reviewed the specific documents identified by plaintiffs’ counsel and can confirm that all redacted material was non-responsive

In other words, Defendants were very clear to the Court that they intended to leave any information they believed *was* “NR” redacted. There was never any commitment to remove *all* NR redactions -- just to review for whether counsel agreed with the reviewer.

In light of this clarity, please let me know whether we will need to incur more fees on this.

Yours,

Remy.

J. Remy Green

Partner

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